IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6714 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RADHAKRISHNAN PUNJAKOTI

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioners

Mr. H.L. Jani, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/12/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. H.L. Jani waives service of rule on behalf of the respondents nos.1 and 2.

The petitioners have prayed for quashing and setting aside the criminal case registered vide CR. no.309/95 at Valod Police Station, District Surat against the petitioners for the offences made punishable under Secs. 70A and 80(1) of the Bombay Prohibition Act, 1941 ("the Act" for short).

The Police Inspector, Surat, had registered CR no.309/95 against the present petitioners on the allegation that on 19-6-1995 at about 21.45 hrs. a truck bearing registration no.KA-05-8-2345 was stopped near village Shiker Tal: Valod, District Surat and on inquiry, it was found that rotten jaggery approximately 18,000Kgs. in 360 gunny bags were loaded in the said truck. That on demand the driver and cleaner were not in a position to produce any pass or permit to possess rotten jaggery (molasses) or transport it. Thereby, the said material was seized as muddammal and offence was registered against the petitioners.

The petitioners have challenged the said complaint on the ground that the petitioners are the residents of Tamil Nadu and they had purchased the said rotten jaggery from Vellore and through the said truck, it was being transported to Nani Daman. That the goods being in transit no pass or permit was required, however, the police authority has stopped the truck, seized the goods and filed the complaint though it does not amount to any offence. Initially, show cause notice was issued. Learned A.P.P. alongwith the concerned Police Officer is present and on inquiry, it is found that no material is collected by the Investigating Officert suggesting that the petitioners have been surreptitiously bringing the said material in the territory of the State of Gujarat with a view to illegally manufacture liquor. On the contrary, the petitioners have produced zerox copy of a bill issued by M/s. Alankar Traders - a jaggery merchant of Vellore and documents were also tendered showing that said goods were being transported to Nani Daman by way of consignment to M/s. Shoab Kirana Stores. Considering the above stated facts as the rotten jaggery was being transported to Nani Daman where provisions of the Bombay Prohibition Act are not applicable such goods in transit through Surat cannot be said to be an offence punishable under Section 71A or 81 of the Act. In that view of the matter, as the alleged act of the petitioner ex facie does not amount to any offence as alleged in the FIR, the FIR cannot be sustained and deserves to be quashed and set aside.

On the basis of the foregoing discussion, the petition is allowed. The FIR and the offence registered

in connection with III CR no.309/95 at Valod Police Station is hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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